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12 Attorneys for Defendant and Counterclaimant,  
13 MICROSOFT CORPORATION

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION

17 INTERTRUST TECHNOLOGIES  
CORPORATION, a Delaware corporation,

18 Plaintiff,

19 v.

20 MICROSOFT CORPORATION, a  
Washington corporation,

21 Defendant.

22 MICROSOFT CORPORATION, a  
Washington corporation,

23 Counterclaimant,

24 v.

25 INTERTRUST TECHNOLOGIES  
CORPORATION, a Delaware corporation,

26 Counter Claim-Defendant.  
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CASE NO. C02-0647 SBA  
Consolidated with C01-1640 SBA

**MICROSOFT'S INITIAL  
DISCLOSURES PURSUANT TO  
FED. R. CIV. P. 26(a)(1) ('721 Patent)**

1 Pursuant to Fed. R. Civ. P. 26(a), Microsoft Corporation ("Microsoft") makes the  
2 following initial disclosures. The initial disclosures are based on information now reasonably  
3 available and Microsoft's current understanding of the claims and defenses in this case.  
4 Microsoft is not providing documents or information not reasonably available at this time.  
5 Microsoft reserves the right to object to discovery into any listed subject matter. Microsoft  
6 reserves the right to supplement this initial disclosure pursuant to Fed. R. Civ. P. 26(e).

7 A. Witnesses

8 Microsoft identifies the following potential witnesses who, based on information and  
9 belief, are likely to have discoverable information relevant to claims and defenses in the action  
10 originally titled C02-0647 EDL (since reassigned and consolidated with C01-1640 SBA), along  
11 with the possible subjects of their testimony.

12 Microsoft incorporates by reference the identity of any individual identified in the Patent  
13 Office file histories of the patents-in-suit, including U.S. Patent No. 6,157,721 ("the '721  
14 Patent"), or involved in the prosecution of any patent-in-suit as being a potential source of  
15 discoverable information relevant to the '721 Patent, including but not limited to the named  
16 inventors, the prosecuting attorneys, and the U.S. Patent Office Examiners.

17 The individuals listed below may have discoverable information relevant to claims and  
18 defenses in this case. The identified individuals may also have information relevant to other  
19 subject matter areas that may be revealed upon further investigation of the matters at issue.  
20 There may be Microsoft employees, the specific identities of whom are not presently known, who  
21 are likely to have discoverable information relevant to claims and defenses in this action. In  
22 addition, there may be other persons and entities known to Microsoft who have discoverable  
23 information relevant to these subject matters, including Independent Software Vendors, Microsoft  
24 certified solution providers, Microsoft certified trainers, application developers, IT professionals,  
25 etc. Microsoft reserves the right to identify additional individuals who may have discoverable  
26 information relevant to any product that may be accused as infringing the '721 Patent, should  
27 InterTrust identify any such product. Microsoft employees may be contacted in this action only  
28 through Microsoft's counsel.

1 Microsoft incorporates its disclosure of November 26, 2001 regarding individuals  
2 employees who have information concerning pre-suit business negotiations between Microsoft  
3 and InterTrust, and licensing of patents-in-suit, and information relevant to prior art to the  
4 asserted InterTrust patents. On information and belief, at least the following additional  
5 individuals have information relevant to prior art to the '721 Patent: Dorothy Denning, George  
6 Davida, Yvo Desmedt, Whitfield Diffie, Robert S. Gray, T.E. Gray, Martin Hellman, Richard J.  
7 Linn, Brian Matt, Ralph Merkle, M.M. Pozzo, Dan Wallach, and anyone or anyone else familiar  
8 with the use or proposed use prior to the '721 Patent's filing date of cryptographic signatures  
9 and/or other "security" in Java, Telescript, Tcl, Verisign or Authenticode. Microsoft further  
10 incorporates by reference the identity of the authors, named inventors, and other individuals  
11 reflected or referenced in the publications and patents that are listed in the patents-in-suit and file  
12 histories or in Microsoft's Notice of Deposition of InterTrust Pursuant to Fed. R. Civ. P. 30(b)(6).  
13 Additional individuals potentially knowledgeable about prior art that may be relevant to the '721  
14 Patent are reflected in documents produced by Microsoft in this matter. Microsoft also  
15 incorporates by reference any individuals disclosed by InterTrust who are likely to have  
16 discoverable information relevant to disputed facts alleged in the pleadings. Microsoft reserves  
17 the right to supplement the identity of possessors of material information pursuant to the Federal  
18 Rules of Civil Procedure and the Local Rules.

19 B. Documents

20 Microsoft has already produced or is producing for inspection and/or copying  
21 nonprivileged documents in its possession, custody or control which it may use to support a claim  
22 or defense relevant to the disputed facts alleged with particularity in the pleadings. Microsoft  
23 objects to the production of attorney-client communications, attorney work product or other  
24 information protected from discovery. Documents withheld on grounds of attorney-client  
25 privilege and/or work product immunity will be identified on a privilege log to be provided at a  
26 time mutually agreeable to the parties or ordered by the Court. Work product and confidential  
27 communications seeking or providing legal advice, or pursuant to the seeking or providing of  
28 legal advice, between Microsoft (or its agents) and attorneys (or their agents) representing

1 Microsoft in connection with such representation produced after October 17, 1994, are also  
2 withheld, without particular identification, as subject to the attorney-client privilege and/or work  
3 product immunity. This categorical identification of these documents is considered to satisfy any  
4 identification requirements necessary to properly assert privilege for these documents. See  
5 Advisory Committee notes to 1993 Amendments to Fed. R. Civ. P. 26(b).

6 C. Computation of Damages

7 As to the infringement claim(s) asserted by InterTrust, Microsoft asserts that it has no  
8 liability in relation to the '721 Patent (or any other InterTrust patent asserted in this action), and  
9 as a result there is no applicable computation of damages therefor. Microsoft reserves the right to  
10 recover attorneys fees and costs to the extent permitted by law. Microsoft anticipates that its  
11 response to any computation of alleged damages by InterTrust pertaining to the '721 Patent, and  
12 supporting documents and other evidentiary materials, will be made available during the course  
13 of discovery, including expert discovery, in this action.

14 D. Insurance Agreements

15 Microsoft is not aware of any insurance agreement relevant to this action under Fed. R.  
16 Civ. P. 26(a)(1)(D).

17 Dated: June 5, 2002

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19  
20 By: \_\_\_\_\_

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